

§ 301.7429-2

26 CFR Ch. I (4-1-01 Edition)

forth the information upon which the district director relies in authorizing such assessment or levy.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

§ 301.7429-2 Review of jeopardy and termination assessment and jeopardy levy procedures.

(a) *Request for administrative review.* Any request for the review of a jeopardy or termination assessment or jeopardy levy provided for by section 7429(a)(2) shall be filed with the district director within 30 days after the statement described in § 301.7429-1 is given to the taxpayer. However, if no statement is given within the 5 day period described in § 301.7429-1, any request for review of the jeopardy or termination assessment or jeopardy levy shall be filed within 35 days after the date such assessment or levy is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to make the redetermination described in section 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment is reasonable and the amount assessed is appropriate, or whether the jeopardy levy is reasonable, the district director shall take into account not only information available at the time the assessment or jeopardy levy is made but also information which subsequently becomes available.

(c) *Abatement of assessment.* For rules relating to the abatement of assessments made under sections 6851 and 6861 see §§ 301.6861-1(e), 301.6861-1(f) and 1.6851-1(d) of this chapter.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

§ 301.7429-3 Review of jeopardy and termination assessment and jeopardy levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in section 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of—

(1) The date the district director notifies the taxpayer of the determination described in section 7429(a)(3) and ending on the 90th day thereafter; or

(2) The 16th day after the request described in section 7429(a)(2) was made by the taxpayer and ending on the 90th day thereafter.

(b) *Extension of period for judicial review.* The United States Government may not by itself seek an extension of the 20 day period described in section 7429(b)(3), but it may join with the taxpayer in seeking such an extension.

(c) *Jurisdiction for determination.*—In general, the United States district court will have exclusive jurisdiction over any civil action for a determination described in section 7429(b). However, if a petition for a redetermination of a deficiency has been timely filed with the Tax Court prior to the making of an assessment or levy that is subject to the section 7429 review procedures, and one or more of the taxes and tax periods before the Tax Court as a result of the petition is also included in the written statement that was provided to the taxpayer, then the Tax Court will have jurisdiction concurrent with the district courts over any civil action for a judicial determination with respect to all the taxes and tax periods included in the written statement. In all other cases, the appropriate United States district court continues to have exclusive jurisdiction over such an action.

[T.D. 8453, 57 FR 58985, Dec. 14, 1992]

§ 301.7430-0 Table of contents.

This section lists the captions that appear in §§ 301.7430-1 through 301.7430-6.

§ 301.7430-1 Exhaustion of administrative remedies.

- (a) In general.
- (b) Requirements.
 - (1) In general.
 - (2) Participates.
 - (3) Tax matter.
 - (4) Failure to agree to extension of time for assessments.
- (c) Revocation of a determination that an organization is described in section 501(c)(3).
- (d) Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.
- (e) Exception to requirement that party pursue administrative remedies.
- (f) Examples.
- (g) Effective date.

Internal Revenue Service, Treasury

§ 301.7430-1

§ 301.7430-2 Requirements and procedures for recovery of reasonable administrative costs.

- (a) Introduction.
- (b) Requirements for recovery.
 - (1) Determination by the Internal Revenue Service.
 - (i) Jurisdiction.
 - (ii) Administrative proceeding.
 - (iii) Administrative proceeding date.
 - (iv) Reasonable administrative costs.
 - (v) Prevailing party.
 - (vi) Not unreasonably protracted.
 - (vii) Procedural requirements.
 - (2) Determination by court.
 - (c) Procedure for recovering reasonable administrative costs.
 - (1) In general.
 - (2) Where request must be filed.
 - (3) Contents of request.
 - (i) Statements.
 - (ii) Affidavit or affidavits.
 - (iii) Documentation and information.
 - (4) Form of request.
 - (5) Period for requesting costs from the Internal Revenue Service.
 - (6) Notice.
 - (7) Appeal to Tax Court.
 - (d) Unreasonable protraction of administrative proceeding.
 - (e) Examples.

§ 301.7430-3 Administrative proceeding and administrative proceeding date.

- (a) Administrative proceeding.
- (b) Collection action.
- (c) Administrative proceeding date.
 - (1) General rule.
 - (2) Notice of the decision of the Internal Revenue Service Office of Appeals.
 - (3) Notice of deficiency.
 - (d) Examples.

§ 301.7430-4 Reasonable administrative costs.

- (a) In general.
- (b) Costs described.
 - (1) In general.
 - (2) Representative and specially qualified representative.
 - (i) Representative.
 - (ii) Specially qualified representative.
 - (3) Limitation on fees for a representative.
 - (i) In general.
 - (ii) Cost of living adjustment.
 - (iii) Special factor adjustment.
 - (c) Certain costs excluded.
 - (1) Costs not incurred in an administrative proceeding.
 - (2) Costs incurred in an administrative proceeding but not reasonable.
 - (i) In general.
 - (ii) Special rule for expert witness' fees on issue of prevailing market rates.
 - (3) Litigation costs.
 - (4) Examples.

§ 301.7430-5 Prevailing party.

- (a) In general.
- (b) Position of the Internal Revenue Service.
- (c) Substantially justified.
 - (1) In general.
 - (2) Exception.
 - (3) Presumption.
 - (d) Amount in controversy.
 - (e) Most significant issue or set of issues presented.
 - (f) Net worth and size limitations.
 - (1) Individuals and estates.
 - (2) Others.
 - (3) Special rule for charitable organizations and certain cooperatives.
 - (g) Determination of prevailing party.
 - (h) Examples.

§ 301.7430-6 Effective date.

[T.D. 8542, 59 FR 29360, June 7, 1994, as amended by T.D. 8725, 62 FR 39118, July 22, 1997]

§ 301.7430-1 Exhaustion of administrative remedies.

(a) *In general.* Section 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which such administrative remedies shall be deemed to have been exhausted.

(b) *Requirements—(1) In general.* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of this chapter (other than a tax matter described in paragraph (c) of this section) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States (including the Court of Federal Claims), participates, either in person or through a qualified representative described in § 601.502 of this chapter, in an Appeals office conference; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice in the case of a petition in the Tax Court or the issuance of a notice of disallowance in the case of a civil action for refund